

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA

v.

BENY MESIKA

Criminal Action No.

1:20-CR-259-MHC-CMS

Sentencing Memorandum

The United States of America, by Byung J. Pak, United States Attorney, and Kelly K. Connors, Assistant United States Attorney for the Northern District of Georgia, files this Sentencing Memorandum.

Background

On July 21, 2020, the defendant entered a negotiated plea to Counts One through Four of a Criminal Information, charging introduction of misbranded foods into interstate commerce. Specifically, the defendant was charged with and pleaded guilty to conspiring to introduce and introducing into interstate commerce, dietary supplements containing Dimethazine, which was not disclosed on the dietary supplements' labeling. "Mutant Plexx," and "Mass Trauma," each of which was found to contain Dimethazine that was not disclosed on the labeling.

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Guidelines Calculations

The Probation Officer correctly calculated Mr. Mesika's base offense level under § 2N2.1(a) as 6. (PSR ¶ 42). Four levels were added, pursuant to § 3B1.1(a), because the defendant was an organizer or leader of criminal activity involving five or more participants. (PSR ¶ 45). Following credit for acceptance of responsibility, the total offense level is 8, resulting in a custodial guidelines range of 0 to 6 months. (PSR ¶ 50). There are no objections to the guidelines calculations.

Sentencing Recommendation

The government recommends that the defendant be sentenced to a term of imprisonment of six months. The government's recommendation for a custodial sentence is reasonable in light of the § 3553(a) factors. The Federal Food, Drug, and Cosmetic Act provides numerous safeguards for American consumers and specifically regulates dietary supplement manufacturers, like Mr. Mesika. Yet, Mr. Mesika, through his company Adrenaline Nutrition Supplements ("ANS"), engaged in dangerous conduct that put consumers at risk – adding ingredients to dietary supplements that were not properly disclosed on the products' labels.

Despite Mr. Mesika's efforts to downplay his knowledge of the formulas and ingredients used to manufacture these dietary supplements, the evidence shows otherwise, and indeed, Mr. Mesika took specific steps to ensure that ANS could continue manufacturing dietary supplements, without the proper oversight of the FDA. On October 4, 2013, FDA agents served a subpoena for records on ANS

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and met with Mr. Mesika. (PSR ¶¶ 15-17). During this interview, Mr. Mesika characterized ANS's business as a distributor of dietary supplements, rather than a manufacturer. (*Id.*). Soon after this interview, Mr. Mesika leased a new property in Doraville, Georgia, and began manufacturing dietary supplements from that location. (PSR ¶ 12). Approximately one month later, Mr. Mesika leased another property in Atlanta, Georgia, and again moved the manufacturing operation to that location. (PSR ¶ 14). Although required to do so, Mr. Mesika failed to register either facility with the FDA and thus avoided FDA oversight regarding the products being manufactured. (PSR ¶¶ 12, 14).

These actions are egregious and were designed to evade law enforcement. As a result, American consumers were deprived of the safeguards the FDCA provides, particularly for products that consumers ingest. Mr. Mesika's actions created an unacceptable risk to consumers' health, and one individual suffered a serious health condition after taking one of ANS's products.¹ A custodial sentence is, thus, reasonable and adequately reflects the seriousness of the offense. Moreover, a custodial sentence will provide for specific and general deterrence.

¹ After resolving a civil lawsuit, this individual's counsel advised undersigned counsel that this individual did not want to be involved in this criminal action and was not seeking restitution.

Conclusion

Given the facts and circumstances of this case, the Government respectfully recommends that the Court sentence Mr. Mesika to serve a custodial sentence of six months.

Respectfully submitted,

BYUNG J. PAK

United States Attorney

/s/KELLY K. CONNORS

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